In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 405

BERNARD J. SEMEL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A 8-10) has not yet been reported.

JURISDICTION

The judgment of the court of appeals was entered on May 31, 1965. The petition for a writ of certiorari was filed on July 29, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a sentence on a plea of guilty—the plea having been voluntarily entered, with the advice of counsel, after a bill of particulars had been furnished—should be vacated on the ground that the bill of particulars showed that venue was in a district other than that where the information was filed.

STATEMENT

In an eighteen count information filed in the Eastern District of Virginia, petitioner was charged with violations of 18 U.S.C. 836, by causing the transportation of fireworks, knowing that they were to be delivered and sold in violation of the laws of Virginia. The government's bill of particulars specified that the delivery referred to in counts 10-12 of the information was in Stephens City, Virginia (Pet. App. B. 12-13). After the particulars had been furnished, petitioner pleaded guilty in the Eastern District of Virginia to count 10 of the information and the remaining 17 counts were dismissed (Pet. App. B. 13-14). On December 8, 1964, petitioner was sentenced to imprisonment for six months, five months of the term being suspended (Pet. App. B. 14).

Petitioner then filed a motion to vacate sentence, alleging that the court was without jurisdiction to sentence him on count 10 since Stephens City is in the Western District of Virginia (Pet. App. B. 12). The district court denied the motion and the court of appeals affirmed, finding that petitioner's plea, volun-

tarily entered, "constituted a waiver of any defect in venue which existed." (Pet. App. A 10).

ARGUMENT

The ruling below was clearly correct. There is a difference between jurisdiction and venue. All district courts of the United States have jurisdiction over "offenses against the laws of the United States." 18 U.S.C. 3231. The right to trial in the district of the offense is the right of a defendant, which he may waive. See Rule 20, F. R. Crim. P. It has been held that where improper venue appears from the face of the indictment (which would include the indictment as supplemented by a bill of particulars), a defendant waives improper venue by proceeding to trial. *United States* v. *Jones*, 162 F.2d 72 (C.A. 2); *Rodd* v. *United States*, 165 F.2d 54 (C.A. 9); *Shetterly* v. *United States*, 205 F.2d 834 (C.A. 6). *A fortiori*, he waives the right to question venue by pleading guilty. *Walker* v. *United States*, 218 F.2d 80 (C.A. 7).

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1965

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